

PATENT COOPERATION TREATY
PCT
INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
 (Chapter II of the Patent Cooperation Treaty)
 (PCT Article 36 and Rule 70)

Applicant's or agent's file reference 504344 NJC	FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/NZ2004/000166	International filing date (day/month/year) 27 July 2004	Priority date (day/month/year) 1 August 2003
International Patent Classification (IPC) or national classification and IPC Int. Cl. ⁷ A61M 16/16		
Applicant FISHER & PAYKEL HEALTHCARE LIMITED et al		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising:
 - a. ☒ (sent to the applicant and to the International Bureau) a total of 1 sheets, as follows:
 - ☒ sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
 - ☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
 - b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or table related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4. This report contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the report
<input type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input checked="" type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

Date of submission of the demand 1 June 2005	Date of completion of the report 4 November 2005
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustalia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer AMOD PRADHAN Telephone No. (02) 6283 2510

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/NZ2004/000166

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This report is based on translations from the original language into the following language which is the language of a translation furnished for the purposes of:

- ☐ international search (under Rules 12.3 and 23.1 (b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

☐ the international application as originally filed/furnished

☒ the description:

pages 1 - 8 as originally filed/furnished

pages* received by this Authority on with the letter of

pages* received by this Authority on with the letter of

☒ the claims:

pages 10 - 11 as originally filed/furnished

pages* as amended (together with any statement) under Article 19

page* 9 received by this Authority on 1 June 2005 with the letter of 1 June 2005

pages* received by this Authority on with the letter of

☒ the drawings:

pages 1/4 - 4/4 as originally filed/furnished

pages* received by this Authority on with the letter of

pages* received by this Authority on with the letter of

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. IV Lack of unity of invention

1. ☐ In response to the invitation to restrict or pay additional fees the applicant has:

☐ restricted the claims.

☐ paid additional fees.

☐ paid additional fees under protest.

☐ neither restricted nor paid additional fees.

2. ☒ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is:

☐ complied with.

☒ not complied with for the following reasons:

1. Claims 1 to 5 and 13 are directed to an apparatus for use in humidified gases delivery treatment comprising a housing, a humidifier, and a chamber heating means connected to said housing, said housing includes a pressurised gases supply, a humidifier engagement, a pressurised gases outlet, a humidified gases return, and a patient outlet, said humidifier includes a humidification chamber having a base, a humidifier inlet, a humidifier outlet and said chamber is engageable with said humidifier engagement via a single motion, and said single motion of engagement urges the base of said humidification chamber adjacent and in contact with said chamber heating means and makes a first fluid connection between said pressurised gases outlet and said humidifier inlet, and makes a second fluid connection between said humidified gases return and said humidifier outlet, with said first and second fluid connections being made in the direction of said single motion. It is considered that the first and second fluid connections being made in the direction of said single motion comprises a first special technical feature.
2. Claims 6 to 12 and 14 are directed to a humidifier chamber comprising a container, with a surrounding wall and top and an open bottom, a heat conductive base enclosing said open bottom of said container, a gases inlet, gases outlet, and a filter means on or over said inlet. It is considered that the open bottom and heat conductive base enclosing said open bottom of said container comprises a second special technical feature.

These groups are not so linked as to form a single general inventive concept, that is, they do not have any common inventive features, which define a contribution over the prior art. The common feature linking together these groups of claims is related to a filter means located at said inlet of said humidifier to filter said gases entering said humidifier. However this feature is not novel in the light of AU 200065475 A1 (RESMED LIMITED) 26 April 2001.

Consequently the common feature does not constitute "a special technical feature" within the meaning of PCT Rule 13.2, second sentence, since it makes no contribution over the prior art. Since there exists no other common feature which can be considered as a special technical feature within the meaning of PCT Rule 13.2, second sentence, no technical relationship within the meaning of PCT Rule 13 between the different inventions can be seen. Therefore these claims lack unity a posteriori.

4. Consequently, this report has been established in respect of the following parts of the international application:

☒ all parts.

☐ the parts relating to claims Nos.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/NZ2004/000166

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)

Claims 1 - 14

YES

Claims

NO

Inventive step (IS)

Claims 4, 6 - 14

YES

Claims 1 - 3 & 5

NO

Industrial applicability (IA)

Claims 1 - 14

YES

Claims

NO

2. Citations and explanations (Rule 70.7)

D1 AU 200065475

D2 WO 1998/057691

D3 WO 2001/010489

Novelty (N) Claims 1 - 14

The invention defined in the amended claims is novel when compared with each of D1 - D3. None of the cited documents disclose the invention defined in the present amended claims on their own.

The features of the remaining/dependent claims are not found in any single document published before the earliest priority date of the claims.

Inventive Step (IS) Claims 1-3, 5

Claim 1

The difference between the invention defined in amended claim 1 and the disclosure of document D1 resides in the filter means being located within said inlet, rather than on or over said inlet. It is considered that this difference constitutes a mere variation in design and one which would be well within the skill complement of a person skilled in this art. Therefore the subject matter of this claim is not inventive and does not meet the requirements of Article 33(3) PCT with regard to inventive step.

Claim 2

D1 and D2 do not individually disclose all the features of the invention but when combined, as would be obvious to a person skilled in the art to do, they disclose all the features claimed.

Claims 3, 5

D1 and D3 do not individually disclose all the features of the invention but when combined, as would be obvious to a person skilled in the art to do, they disclose all the features claimed.

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Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
P, Y WO 2004/026382	1 April 2004	17 September 2003	17 September 2002
P, Y EP 1369141	10 December 2003	3 June 2003	5 June 2002

Document '382 discloses features which if combined with D1 would make the invention disclosed in claims 1-14 obvious. Document '141 discloses features which if combined with D1 would make the invention disclosed in claim 5 obvious.

2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure

Date of non-written disclosure
(day/month/year)Date of written disclosure
referring to non-written disclosure
(day/month/year)

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Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of: V

The features of the remaining claims are not found in any combination of documents published before the earliest priority date of the claims. See however the indication contained in Box No. VI "Certain documents cited".

P Category Documents

With regard to the document(s) listed in Box VI under "certain documents cited", these are documents published prior to the international filing date but later than the priority date claimed but which would otherwise be considered to be of particular relevance.

Under the PCT, novelty is considered only in respect of documents published before the priority date. The relevance of a document published after the priority date is dependent upon national law. Such documents are excluded from consideration in preliminary examination, under the PCT Guidelines but have been included here for information.

Industrial Applicability (IA) Claims 1-14

The claims are related to products capable of commercial application.